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VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, TWB-204
Washington, D.C. 20554

**RE: In the Matter of Implementation of the Telecommunications Act of 1996;
Telecommunications Carriers' Use of Customer Proprietary Network
Information and other Consumer Information, CC Docket No. 96-115**

**RE: Petition for Rulemaking to Enhance Security and Authentication Standards for
Access to Customer Proprietary Network Information, RM-11277**

Dear Secretary Dortch:

The New Jersey Division of the Ratepayer Advocate¹ ("Ratepayer Advocate") submits comments in response to the Notice of Proposed Rulemaking ("NPRM") issued by the Federal Communications Commission ("FCC" or "Commission") in the above-captioned proceedings on February 14, 2006.² The NPRM seeks comment on issues raised by a Petition for Rulemaking ("Petition") filed by the Electronic Privacy Information Center ("EPIC") on August 30, 2005. The Ratepayer Advocate fully supports increased protections for consumers of Customer Proprietary Network Information ("CPNI"). As consumers' reliance on the intermodal alternatives for communications, including Voice over Internet Protocol ("VoIP") grows, protection of their proprietary information looms larger as a critical issue.

^{1/} The Ratepayer Advocate is an independent New Jersey State agency that represents and protects the interests of all utility consumers, including residential, business, commercial, and industrial entities. The Ratepayer Advocate participates actively in relevant Federal and state administrative and judicial proceedings.

^{2/} FCC 06-10, 71 Fed. Reg. 13317 (March 15, 2006); *In the Matter of Implementation of the Telecommunications Act of 1996*, CC Docket No. 96-115; *Telecommunications Carriers' Use of Customer Proprietary Network Information and other Customer Information*; *Petition for Rulemaking to Enhance Security and Authentication Standards for Access to Customer Proprietary Network Information*, RM-11277, *Notice of Proposed Rulemaking*, Rel. February 14, 2006 ("CPNI NPRM").

Background

In its *CPNI NPRM*, the Commission granted the petition for rulemaking from EPIC that asked for enhanced security standards with respect to access to CPNI.³ The EPIC Petition provides ample evidence of the potential for unauthorized release of customer's proprietary information. The Petition highlights the activities of data brokers advertising through various websites the availability of calling records for cell phone, landline and VoIP users as well as non-published phone numbers.⁴ The EPIC Petition hypothesizes that data brokers are obtaining CPNI through "pretexting,"⁵ hacking online customer accounts, and possibly through the assistance of dishonest employees of telecommunications carriers.⁶

Congress adopted Section 222 to create a framework for the treatment of information gathered by telecommunications carriers. Section 222 provides "the greatest level of protection" to CPNI,⁷ and defines CPNI as:

- (A) information that relates to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier by the customer solely by virtue of the carrier-customer relationship; and
- (B) information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier.⁸

The Commission describes CPNI as including "highly-sensitive personal information" such as the services purchased by the consumer (*e.g.*, call waiting); the telephone numbers called by a consumer; and the frequency, timing and duration of consumers' calls.⁹ Section 222 requires that telecommunications carriers protect customer CPNI, and furthermore limits carriers' use or disclosure of CPNI to the following circumstances:

³/ Petition of the Electronic Privacy Information Center for Rulemaking to Enhance Security and Authentication Standards for Access to Customer Proprietary Network Information, CC Docket No. 96-115, August 30, 2005 ("Petition").

⁴/ *CPNI NPRM*, at para. 1.

⁵/ Pretexting refers to "the practice of pretending to have authority to access protected records." EPIC Petition, at 1.

⁶/ *CPNI NPRM*, citing EPIC Petition, at 1.

⁷/ *Id.*, at 2.

⁸/ 47 U.S.C. § 222(h)(1).

⁹/ *CPNI NPRM*, at para. 3.

- (1) when required by law;
- (2) with customer approval; and
- (3) in the provision of telecommunications service from which the information is derived, or in the provision of services necessary to provide such service.¹⁰

The Commission adopted comprehensive CPNI rules implementing Section 222 in February, 1998.¹¹ The Commission notes in its *CPNI NPRM* that the most relevant of those rules for this discussion is that carriers “must receive opt-in (affirmative) consent before disclosing CPNI to third parties or affiliates that do not provide communications-related services.”¹² In addition, the 1998 rules require carriers to adopt certain safeguards, including:

- Design of customer service records that allow for customer CPNI approval to be clearly established;
- Personnel training regarding CPNI use;
- Records must track access to CPNI;
- Third party disclosure must be recorded and record of such disclosure must be kept for one year;
- Review process for outbound marketing campaigns; and
- Annual certification of compliance with CPNI requirements and such certification made available to the public.¹³

NPRM Issues for Comment

The Commission asks for comment as to whether the Commission’s current opt-out policy for CPNI disclosure to joint venture partners and independent contractors sufficiently protects customer’s CPNI, in light of the problems highlighted by the EPIC petition.¹⁴ One would expect the carriers to oppose changes because of their reliance on “triple play” strategies and their strategy that relies upon high-value customers subscribing to a range of services. However, it is not difficult to see how tracking CPNI becomes more difficult under all of these joint venture/affiliate relationships. At a minimum, the Ratepayer Advocate urges that Commission require additional safeguards as proposed by EPIC.

¹⁰/ *Id.*, at para. 4.

¹¹/ *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information and Implementation of Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, CC Docket Nos. 96-115 and 96-149, *Second Report and Order and Further Notice of Proposed Rulemaking*, 13 FCC Rcd 8061 (1998).

¹²/ *CPNI NPRM*, at para. 6.

¹³/ *Id.*, at para. 7.

¹⁴/ *Id.*, at para. 12.

Ratepayer Advocate's Recommendations

The Ratepayer Advocate supports the imposition of EPIC's five types of security measures which are:¹⁵

- *Consumer-set passwords.* Because unauthorized parties can obtain common biographical information fairly easily, such as a customer's social security number, date of birth, and mother's maiden name, a consumer-set password at the time of service activation is reasonable and passwords can be helpful. Notification of a password change could be an important tool for consumers in determining when the security of their CPNI has been breached.
- *Audit trails.* If carriers record all instances when a customer record is accessed, insiders would be deterred from selling information, and carriers could identify and address security issues. As EPIC notes carriers already must record CPNI disclosure for marketing purposes or to third parties (47 C.F.R. § 64.2009(c)), and, therefore, the marginal cost to also record disclosure to purported account holders should be small.
- *Encryption.* Encrypting stored CPNI data would be helpful.
- *Limiting Data Retention.* Appropriate data retention periods are warranted applicable to access but billing records must be maintained.
- *Notice.* Notification of customers when the security of their CPNI has been breached is reasonable.

The Ratepayer Advocate supports adding requirements that carriers should verify customer identify through a call to the customer's telephone number or letter to their mailing address before release, and such "precautionary verification" should be offered to customers automatically unless consumers notify the carrier otherwise. Significant consequences ensue as a result of the release of CPNI, such as a threat to a customer's personal safety. Therefore, it is reasonable for the Commission to require carriers to notify customers whenever their CPNI is released. In addition, carriers should permit customers to put a "no release" order on their CPNI.

The Ratepayer Advocate supports increased and improved enforcement by the Commission. Increased consumer education is appropriate, as well. Current notifications may not be adequate. 47 C.F.R. §64.2008(c) specifies that such notifications be "comprehensible and not be misleading," but problems persist. In that regard, carriers should report instances of unauthorized access to, or disclosure of, CPNI to the Commission, and such disclosure requirements should apply to VoIP service or any IP-enabled service providers.

¹⁵/ *Id.*, at para. 14.

In conclusion, the Ratepayer Advocate submits that the protection of consumers is in the public interest and preventing the unauthorized disclosure of CPNI is warranted and necessary. As a result, the Ratepayer Advocate urges the Commission to:

- require telecommunications carriers to notify customers when a request for their CPNI is made before releasing the CPNI
- maintain adequate records of such requests
- adopt more pro-active safeguards – that do not place the onus on consumers – for the prevention of unauthorized disclosure of CPNI
- adopt reasonable retention period(s) for CPNI data and mandate that such data be unavailable to third parties after such retention period(s) (but require retention of billing records in back up files to address billing disputes for longer periods).

Very truly yours,

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